

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

ATLANTIC CASUALTY INSURANCE COMPANY,  
a foreign corporation,

MSC No. 154026  
COA No. 325739  
Lower Court No. 14-000055-CK  
(Ontonagon County)

Plaintiff-Appellee,

v

GARY GUSTAFSON,

Defendant-Appellant,

and

ANDREW AHO,

Defendant.

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**APPELLANT'S SUPPLEMENTAL BRIEF IN SUPPORT OF**  
**APPLICATION FOR LEAVE TO APPEAL**

## **BACKGROUND**

This brief addresses the questions about which the parties were directed to file supplemental briefs pursuant to this Court's Order dated May 17, 2017.

**1. THE PHRASE "ANY PROPERTY OWNER" IN THE "CONTRACTOR" DEFINITION IS NOT AMBIGUOUS WHEN READ IN THE CONTEXT OF THE ENTIRE DEFINITION AND THE PRINCIPLES OF CONSTRUCTION THAT GOVERN THE INTERPRETATION OF AN INSURANCE POLICY.**

The meaning of the phrase "any property owner" from the "contractor" definition in the Combination Endorsement must not be determined in isolation but rather based on reading the entire definition as a whole and the principles that govern the interpretation of an insurance policy in order to harmonize and give effect to the terms of the entire endorsement to avoid absurd or unreasonable results. *Fragner v American Community Mutual Insurance Company*, supra. *Hastings Mutual Insurance Co v Safety King Inc*, supra. In this context, the phrase "any property owner" includes the owner of the property on which any commercial work is being performed by a contractor. This is the only reasonable and logical interpretation that is consistent with the other persons and entities described in the definition. The phrase "any property owner", is not ambiguous when read and interpreted in this context. The argument that it's ambiguous is based entirely on Plaintiff's assertion that "any property owner" includes anyone who owns any property which is an absurd and unreasonable interpretation which violates one of the legal principles that govern its interpretation.

**2. THE PHRASE "ANY PROPERTY OWNER" IN THE "CONTRACTOR" DEFINITION IS NOT LIMITED TO A PROPERTY OWNER THAT HAS A COMMERCIAL OR FINANCIAL INTEREST IN THE PROJECT.**

The "contractor" definition does not state that it applies only to a property owner

that has a commercial interest in the project. Therefore, its application is not limited to a property owner that has a commercial or financial interest in the project. When read in the context of the entire definition, its clear that the phrase “any property owner” applies to both the owner of the property on which the work is being performed and any property owner that has a financial or commercial interest in the project. It does not apply to “any property owner” that does not have any ownership interest in the property where the work is being performed or any of the materials/equipment being used on the project.

The Court of Appeals erroneously concluded that the phrase “any property owner” does not apply to the owner of the property on which the work is being performed unless the property owner receives some monetary compensation for the work, equipment or supplies. This is contrary to the words in the definition which do not state that it applies only to a property owner that receives a financial or commercial benefit from the project.

**3. THE HEADING OF THE ENDORSEMENT SHOULD NOT BE GIVEN ANY SPECIAL WEIGHT OR CONSIDERATION IN DETERMING THE MEANING AND APPLICATION OF THE ENDORSEMENT WHICH MUST BE DETERMINED BASED ON ALL OF THE TERMS IN THE ENDORSEMENT.**

The heading of the “Combination Endorsement” exclusion includes the word “contractor” which appears in quotations in the body of the endorsement. This means that the word is given a special definition in the Endorsement which governs its meaning. It is improper to give any special weight to the heading of the endorsement which would violate the principles that govern the interpretation of this endorsement which must be read and interpreted as a whole to harmonize and give effect to all its

provisions including the words and phrases that appear in quotations which are to be interpreted in accordance with the special definitions in the policy. *Fragner*, supra.

*Allstate Insurance Co v Freeman*, supra.

DATED: June 26, 2017

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by electronic filing at their respective e-mail addresses as disclosed by the pleadings of record herein, on the day of June 26, 2017. I declare under penalty of perjury that the statement above is true to the best of my knowledge, information and belief.

/s/Jessica R. Beck

Respectfully submitted,

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